

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

	X	
In re PAYMENT CARD INTERCHANGE	:	MDL No. 1720(MKB)(JAM)
FEE AND MERCHANT DISCOUNT	:	
ANTITRUST LITIGATION	:	Civil No. 05-5075(MKB)(JAM)
	:	
	:	RULE 23(b)(3) CLASS COUNSEL'S
This Document Relates To:	:	MONTHLY REPORT REGARDING THIRD-
	:	PARTY ENTITIES
ALL ACTIONS.	:	
	:	
	X	

I. INTRODUCTION

This is the fifth monthly report regarding third-party claims filers following the Court's request.

As Rule 23(b)(3) Class Counsel ("Class Counsel") reported previously, with the claims process ramping up, there has been a noticeable increase in class member calls. Since the last report, the numbers have steadily increased. These calls are tracked and reported to Class Counsel from Epiq. Class Counsel also directly receives calls and emails regarding third parties that are followed up on immediately. Additionally, Class Counsel regularly searches online using various keywords in an attempt to monitor what is a fluid situation.

In this report, Class Counsel describes current issues related to third parties.

II. UPDATES REGARDING THIRD-PARTY ISSUES

In previous monthly reports, Class Counsel informed the Court that it was in discussions with a law firm that received both: (1) an attorney fee for its work performed on behalf of the class; and (2) is offering fee-based claims-filing services for members of the merchant class. Class Counsel and the law firm have reached an agreement in principle to resolve Class Counsel's concerns, whereby the law firm will amend its disclosures to include the fact that it received a fee as one of class counsel and, for merchants it has already enlisted as third-party filing clients, proactively inform them of this fact, offering them a 30-day window in which to terminate their agreement with no recourse. Class Counsel believes this agreement should put this matter to rest and will continue to monitor the situation and alert the Court should any additional issues arise.

III. NEW ISSUES

Class Counsel receives near daily emails and calls from both class members with questions regarding third parties as well as from third-party claims-filing company representatives with questions regarding the claims process. Additionally, Class Counsel conducts searches to determine whether various third parties are complying with the Court's orders.

Recently, Class Counsel was made aware of another law firm serving as a third-party claims filer. A class member, after receiving a postcard, went to the website provided and paused when he was asked to sign a retention agreement. That prompted him to contact Epiq, who then elevated the issue to Class Counsel. Class Counsel conducted an investigation and sent letters outlining various false and/or misleading statements to the law firm as well as to an entity that the firm hired to conduct the postcard mailing. Within the day, Class Counsel was able to have the law firm commit to: (1) making significant changes to their marketing material; and (2) agreeing to send out corrective notices to class members that signed up for their services, with an option to cancel any contract. The company that was responsible for the mailing of the postcards confirmed that they were not part of the claims-filing services and had no role in creating the content of the solicitations that were sent. At this time, no further action appears necessary.

IV. OUTREACH TO THIRD PARTIES BY EPIQ

As Class Counsel previously reported, since August 18, 2023, Epiq has been performing specific outreach efforts to known third-party claims filers. As of February 9, 2024, Epiq has been in communication with 112 third-party claims filers, law firms, and non-traditional bulk filers following the outreach that took place on August 18, 2023. Of those 112 third parties, Epiq has received client lists from 55 third-party claims filers which claim representation of 193,909 Tax Identification Numbers (“TIN”)/Legal Entities. These client lists also include multiple rows for a single TIN, and multiple rows that lack TINs or have invalid TINs (alphabetic characters, too few or too many digits). Of those 55 third-party claims filers, Epiq has received 118,506 documents from 49 third-party claims filers. Several third-party claims filers have combined their documentation into a single .pdf that covers multiple clients, so the true number is likely higher than the current document count can substantiate. Work continues, including the development of processes to efficiently handle the expected increase in third-party claims.

V. CONCLUSION

Class Counsel will continue to apprise the Court regarding issues with third-party claims filers via monthly reports and will bring urgent matters to the Court's attention via letter or other means should the Court wish a different method to be used. The next monthly report will be filed on March 22, 2024.

DATED: February 16, 2024

ROBBINS GELLER RUDMAN
& DOWD LLP
PATRICK J. COUGHLIN
ALEXANDRA S. BERNAY

s/ Alexandra S. Bernay
ALEXANDRA S. BERNAY

655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

ROBINS KAPLAN LLP
K. CRAIG WILDFANG
THOMAS J. UNDLIN
2800 LaSalle Plaza
800 LaSalle Avenue South
Minneapolis, MN 55402-2015
Telephone: 612/349-8500
612/339-4181 (fax)

BERGER MONTAGUE PC
H. LADDIE MONTAGUE, JR.
MERRILL G. DAVIDOFF
MICHAEL J. KANE
1818 Market Street, Suite 3600
Philadelphia, PA 19103
Telephone: 215/875-3000
215/875-4604 (fax)

Co-Lead Counsel for Plaintiffs